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2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF WASHINGTON

4 KELLY HARRIS, et al., }
5 Plaintiffs, }
6 vs. }
7 CROWN MOVING and }
8 MAYFLOWER TRANSIT CORP., }
9 Defendants. }

10 **BEFORE THE COURT** is Defendants' Motion to Dismiss heard without
11 oral argument on May 15, 2007. Ronald G. Morrison and Regina M. McCrea
12 represent Plaintiffs. John A. Anderson represents Defendants. **It Is Hereby**
13 **Ordered** that Defendants' Motion to Dismiss is **Granted** for the following
14 reasons.

15 **BACKGROUND**

16 Plaintiffs filed this lawsuit on March 30, 2007 in the District Court of the
17 State of Washington for Spokane County alleging only violations of state law. On
18 April 26, 2007, Defendants removed the case to this court and filed a Motion to
19 Dismiss. On May 3, 2007, this court entered an Order to Show Cause why this
20 case should not be remanded to state court. Defendant filed a pleading pointing
21 out that Plaintiff's claims arise under the federal Carmack Amendment, which
22 completely preempts all state law claims, which is good cause why this case
23 should not be remanded.

24 It is Plaintiffs' claim that the Defendants picked up Plaintiffs' household
25 goods for transportation from Washington to Arizona and that before the goods
26 left Washington, they were in an unlocked truck in an unsafe area and a large

1 portion of Plaintiff's goods were stolen. They allege violation of state law,
 2 including the Washington Consumer Protection Act.

3 In *Caterpillar Inc. v. Williams*, 428 U.S. 386, 392, the Supreme Court held
 4 that the presence or absence of federal-question jurisdiction is governed by the
 5 well-pleaded complaint rule, which provides that federal jurisdiction exists only
 6 when a federal question is presented on the face of plaintiff's properly pleaded
 7 complaint. Even the existence of a defense based on federal law is insufficient to
 8 support federal jurisdiction. *Wayne v. DHL Worldwide Express*, 294 F.3d 1179,
 9 1183 (9th Cir. 2002). It was this reasoning which led this court to believe this
 10 case should be remanded to state court.

11 However, Defendants pointed out that there is an exception to this rule
 12 where a federal defense completely preempts all state law claims in the area of the
 13 applicable law.

14 Although we usually defer to plaintiff's choice to plead state law
 15 claims, there exist a handful of 'extraordinary situations where even a
 16 well-pleaded state law complaint will be deemed to arise under
 17 federal law for jurisdictional purposes. *Holman v. Laulo-Rowe
 Agency*, 994 F.2d 666, 668 (9th Cir. 1993). Under the "artful
 18 pleading" doctrine, a well-pleaded state law claim presents a federal
 19 question when a federal statute has completely preempted that
 particular area of the law and any claim purportedly based on that
 preempted state law is considered, from its inception, a federal claim,
 and therefore arises under federal law and may, therefore, be removed
 to federal court.

20 *Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 8 (2003). The Carmack
 21 Amendment is one of very few such preemptive federal laws. The Carmack
 22 Amendment provides a "uniform national liability policy for interstate carriers"
 23 and is the exclusive cause of action for interstate shipping contract claims alleging
 24 loss or damage to property.

25 Congress intended for the Carmack Amendment to provide the
 26 exclusive cause of action for loss or damage to goods arriving from
 the interstate transportation of those goods by a common carrier.

27 ORDER GRANTING DEFENDANTS'
 28 MOTION TO DISMISS --2

1 *Hall v. North American Van Lines*, 476 F.3d 684 (9th Cir. 2007).

2 The Carmack Amendment completely preempts “state law claims”
 3 seeking to recover damages for charging an improper rate for
 4 transporting the goods and the failure to fulfill duties closely related
 5 to the duty of delivery. We hold that the Carmack Amendment is
 6 the exclusive cause of action for contract claims alleging delay, loss,
 7 failure to deliver, or damage to property. *Id.*

8 Plaintiffs claim that state law claims regarding theft and damage of goods
 9 after being picked up but prior to being shipped are not preempted by the Carmack
 10 Amendment and that Washington courts have not yet determined that the Carmack
 11 Agreement preempts claims arising under the Washington Consumer Protection
 12 Act.

13 However, the Carmack Agreement defines transportation as including:

14 (B) services related to that movement, including arranging for, receipt,
 15 delivery, elevation, transfer in transit, refrigeration, icing, ventilation, **storage**,
 16 handling, packing, unpacking and interchange of passengers and property. Courts
 17 have interpreted this language to include virtually everything related in any way to
 18 the move of household goods. *See Marks v. Suddath Relocations Systems, Inc.*,
 19 319 F. Supp.2d 746, 750 (S.D. Tex. 2004)(the dispositive fact is that all of their
 20 claims are based on allegations that Suddath (the carrier) damaged and/or lost
 21 property where transportation and storage was governed by an interstate bill of
 22 lading); *Rini v. United Van Lines*, 194 F.3d 402, 406 (1st Cir. 1997) (finding that
 23 state law claims that are preempted “include all liability stemming from the
 24 damage or loss of goods, liability stemming from the claims process, and liability
 25 related to the payment of claims.)

26 Further, courts who have dealt with losses sustained during origin storage,
 27 as is the case here, have held that losses sustained during that storage are merely
 28 incidental to the transportation of goods and are covered by the Carmack

1 Amendment. *Diamond Transportation Group Inc. V. Emerald Logistics Solutions*
2 *Inc.*, 2006 WL 1789036 (E.D. Pa. 2006); *Rahim Visram v. Darryl Flood*
3 *Warehouse and Moves*, 2006 W.L. 305802 (S.D. Tex. 2006); *Newens v. Orna*
4 *Services, Inc.*, 2002 WL 131734 (N.D. Cal. 2002) (**loss or damage to possessions**
5 **during intrastate transportation and storage of possessions in preparation for**
6 **an interstate move are covered by Carmack.**)

7 Plaintiffs allege that their goods were damaged while stored in a Mayflower
8 Transit truck prior to their shipment to Arizona, which clearly falls within the
9 preemptive scope of the Carmack Amendment and all the Plaintiffs' state law
10 claims must be dismissed. Defendant Crown Moving must also be dismissed as a
11 Defendant.

12 However, Plaintiffs may within Thirty (30) days from the date of this
13 Order, if they so wish, file an Amended Complaint against Mayflower Transit
14 Corp. under the Carmack Amendment for damages they suffered as the result of
15 the loss of their goods. Failure to file an Amended Complaint will result in the
16 entry of a Judgment of Dismissal.

17 **It Is So Ordered. The Clerk is directed enter this Order and forward**
18 **copies to counsel and the Plaintiffs.**

19 **DATED** this 14th day of June, 2007.

20 s/ Justin L. Quackenbush
21 JUSTIN L. QUACKENBUSH
22 SENIOR UNITED STATES DISTRICT JUDGE
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26
27 ORDER GRANTING DEFENDANTS'
28 MOTION TO DISMISS --4